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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,432	06/29/2001	Edward Paul Cernocky	SOC-105	8240

23632 7590 01/04/2007

SHELL OIL COMPANY  
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EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 01/04/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/896,432

Applicant(s)

CERNOCKY ET AL.

Examiner

Daniel L. Greene Jr.

Art Unit

3694

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 06 October 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☒ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and **relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheets.

  
Daniel L. Greene Jr.  
12/13/2006

continuation of 10. Other (including any explanation in support of the above items):

1. Item 1- Per MPEP section 1205.02 [R-3] Appeal Brief Content "An example of a format and content for an appeal brief for a patent application is a brief containing the following items, with each item starting on a separate page" Applicants appeal brief does not contain each item "on a separate page"

2. Item 2- See section 3 of the Examiners Answer mailed 12/27/2005, i.e. the Status of the Claims does not disclose which claims are under appeal.

3. Item 4- Applicant has AGAIN failed to properly set forth the claimed subject matter BY PAGE AND LINE NUMBER. Applicant has instead inserted paragraph numbers, but IT IS NOT SEEN wherein the application as filed even has a specification with the paragraphs numbered. The Specifications in the file only appear to indicate pages and line numbers.

4. Item 5- Applicant has AGAIN failed to PROPERLY indicate the grounds of rejection. Applicant is directed to sections 6a and 6b of the Examiners Answer mailed 12/27/2005 AND section 3 and 4 of the Office action mailed 8/10/2005.

5. Item 6- Each separate heading should exactly duplicate the grounds of rejection set forth in section (vi) of the Appeal Brief.

FURTHER, Applicant should review each and every ground of rejection that the Examiner has set forth in the previous Office actions AND the Examiners Answer as it appears Applicant is NOT PROPERLY ARGUING the ACTUAL contentions set forth therein

6. Item 7- The claims index should be a clean copy WITHOUT the status indicators of each claim, i.e. (Previously presented), (Original), etc.

7. Item 10- The evidence appendix and related appeals appendix DO NOT start on a new pages per 1205.02 [R-3] Appeal Brief Content(ix) Evidence appendix. The appendix should start on a new page. If there is no evidence being relied upon by appellant in the appeal, then an evidence appendix should be included with the indication "none." (x) Related proceedings appendix. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to 37 CFR 41.37(c)(1)(ii). The appendix should start on a new page.

8. Page 6 lines 6-7 of applicant Appeal Brief contains "Agent has amended claim to include the limitation of attaching the explosive charge to the tubular such that the explosive charge is in direct contact with the tubular." This is improper as applicant did NOT amend the claim in the instant Appeal Brief. Applicant should state that this amendment occurred in the past tense, as applicant did amend the claim as indicated in the response received 5/2/2005. FURTHER applicant alleges support for this limitation within the specification but DOES NOT provide evidence as to precisely where said limitation can be found BY PAGE AND LINE NUMBER.

9. Applicant is directed to thoroughly review the CURRENT USPTO appeal practices set forth in sections 1200+ of the MPEP, specifically sections 1205 [R-3] Appeal Brief, 1205.02 [R-3] Appeal Brief Content, AND 1205.03 [R-3] Non-Compliant Appeal Brief and Amended Brief.


10. It is noted that many of the issues set forth within the instant Notice of Non-Compliance have been previously set forth in other communications from the Office, see for examples the Notices of Non-Compliance mailed 8/10/2006, 7/17/2006 AND the Examiners Answer mailed 12/27/2005.

FURTHER the Examiner also directly communicated with Rachel Stiegel on 9/13/2006 regarding the deficiencies of the previous Appeal Briefs and current USPTO practices.

Applicant is AGAIN ADVISED to review the requirements of 37 CFR 41+ and the MPEP to ENSURE THE RESPONSE TO THIS INSTANT COMMUNICATION IS IN FULL COMPLIANCE WITH CURRENT USPTO PRACTICES.

According to section 1205.03 [R-3] Non-Compliant Appeal Brief and Amended Brief "The appeal will be dismissed if the appellant does not timely file an amended brief, or files an amended brief which does not overcome all the reasons for noncompliance of which the appellant was notified."

FAILURE TO CORRECT EACH AND EVERY ITEM PRESENTED HEREIN WILL BE CONSIDERED AS FULFILLING THE REQUIREMENT OF SECTION 1205.03 AS SET FORTH IMMEDIATELY ABOVE AND WILL ACCORDINGLY RESULT IN THIS APPEAL BEING DISMISSED AND THE APPLICATION ABANDONED AS NO ALLOWABLE CLAIMS ARE PRESENT.

  
ELLA COLBERT  
PRIMARY EXAMINER